



**City Council  
Pre-Agenda/Regular Meeting  
Monday  
October 19, 2015 @ 6:30 pm  
Minutes**

**Members Present:** *Mayor*, Jesse Hill; Council members: Chester Ayers, Gene Byerly, Jack Carico, Jerry Daniels, Debbie Frazier, Linda Gantt, Ed Lohr and Don Payne.

**Members Absent:** None

**Others Present:** City Manager, Debbie Hinson; City Attorney, Nick Herman; Public Works Director/ Stormwater Administrator, Rich Baker; Planning Director, Marc Allred; Assistant Finance Officer, Lisa Beam; Assistant City Clerk, Annette De Ruyter; Randolph County Deputy, Eric Wilson; and other interested parties.

**1. Call to Order**

Mayor Hill called the Meeting to order at 6:02pm.

**2. Pledge of Allegiance and Invocation**

Mayor Hill led the Pledge of Allegiance and gave the Invocation.

**3. Review and Discuss Items listed on the Regular Meeting Agenda**

*Motion by Council member Frazier to accept the Agenda as written seconded by Council member Daniels and approved unanimously 8 ayes and 0 nays with no members absent.*

**I. Council Action to Accept or Amend the Agenda**

The Regular Meeting Agenda was adopted during the Pre-Agenda Session upon *motion by Council member Frazier to accept the Agenda as written seconded by Council member Daniels and approved unanimously 8 ayes and 0 nays with no members absent.*

**II. Standing Report**

**A. Ennis Flint Sewer Extension**

Mr. Baker gave a brief update on the Ennis Flint Sewer Extension. He confirmed that Randolph County matched the City funds and all information for this project will be presented to Golden Leaf, a funding source for this project.

### **III. Public Comment Period**

**Shirley Hamer- 4969 Cedardale Road**, Ms. Hamer asked to be de-annexed from the City of Trinity and felt that she is not receiving any services for her taxes.

Council member Ayers responded to Ms. Hamer's comments regarding his feelings on services provided by the City for her tax dollars.

**Treva Grace- 5014 Warren Lane**, We have a problem with our water line. Our meter is on Lake Darr Road and the water line goes through the woods to get to our house. The trees have grown up and we have no way to get to the lines located on the other property. She felt because of the increase in her usage resulting in a higher bill there was a leak in the line.

Mayor Hill closed the Public Comment at 6:18 pm.

### **IV. Consideration of Consent Agenda:** These items are considered routine, non-controversial and are considered and approved by motion, second, and vote.

- 1. Approval of the Minutes for the September 14, 2015 Pre-Agenda Meeting**
- 2. Approve of the Minutes for the September 14, 2015 City Council Regular Meeting.**

Mayor Hill opened this item and called for a motion to approve (items 1 and 2) September 14, 2015 Pre-Agenda and Regular Agenda minutes.

*Motion by Council member Carico to approve the September 14, 2015 minutes (pre-agenda and regular minutes) as written. The motion was seconded by Council member Payne and approved unanimously with a vote of 8 ayes and 0 nays with no members absent.*

### **V. Public Hearings**

- 3. Text Amendment to Article VII, Section 7-14, No. 5, Home Occupation – (Grading and Contractors Operation)**

Mayor Hill opened the Public Hearing at 6:19 pm and called on Planning Director, Marc Allred to address the Council.

Planning Director Allred shared with Council that Mr. Adcock has requested a Text Amendment to the Home Occupation that allows Grading and Contractors Operation.

This amendment would allow an individual who operates a grading or contracting business from their home to keep a limited number of vehicles with three or more axels on their property as long as their property meets certain minimum acreage requirements. The proposed text amendment does not increase the total number of commercial and/or employee vehicles that may be parked on the property at one time.

Mr. Allred introduced Attorney Shane Stutt.

Attorney Stutts discussed conversation with previous Council members regarding this item. Due to previous commitments these persons could not be present tonight to confirm earlier conversation concerning this item. Attorney Stutts asked Council to consider tabling this hearing until the next Council Meeting.

***Motion was made by Council member Lohr to table until the November 2015 meeting. The motion was seconded by Council member Carico. After a vote of 4 ayes and 4 nays, Mayor Hill voted not to extend this item until the next meeting.***

Attorney Stutts presented information to Council concerning the proposed Text Amendment that would allow changes to the Home Occupation Permit for Grading and Contractors Operation.

Attorney Stutts discussed his understanding regarding the current Ordinance. This Ordinance came into effect in 2010 and my client (Mr. Adcock) has owned acreage on Mendenhall Road prior to 2010. He purchased this property in 2008 but he did not live there at that time. He moved there in 2010.

It is my understanding this Ordinance was created due to problems that resulted between two neighbors that lived side by side. One neighbor had a truck parked near the bedroom window that resulted in a disturbance when the truck was started at 4:00 am in the morning.

Attorney Stutts discussed the fact that his client lived on Merle Drive in 2010 when this Ordinance became effective and kept a tractor-trailer at this address. As stated earlier Mr. Adcock owned property on Mendenhall Road. In 2010 Mr. Adcock approached Council with a request to amend the Zoning Ordinance to change the acreage located on Mendenhall from Residential to Industrial. What this change was proposed to do at that time was to create a "stump dump".

Attorney Stutts stated that his client was not in violation of the number of vehicles allowed and had never been accused of this. The issue in question is the number of axles that is allowed on the vehicle.

Our text amendment is specifically crafted to reach that issue.

Mr. Adcock thought that he had completed a Home Occupation Permit Application. Neither my client nor the City can provide evidence that an application for permit was ever filed.

After meeting with the Mayor, Planning Director, City Manager, and other staff members I have reviewed the information listed in the Home Occupation Permit. The City allows for 5 vehicles for someone operating under the Grading and Contractor Operation if they qualify with a minimum of 5 acres. This is basically 1 vehicle per acre. Mr. Adcock has 22 acres located on Mendenhall Road. This is over 4 times the amount of property required by the Ordinance at the Mendenhall location.

I think the purpose in 2010 and my understanding of the truck permit is that you didn't want folks in subdivisions having a tractor trailer parked in front of their house. I understand the reason that you do not want to have houses built on ¼ acre that have a tractor trailer sitting directly in front of it or on the middle of the lot. However, we have someone here that has 22 acres that is heavily wooded with a small space on Mendenhall Road. I would note that Mendenhall Road itself is rather transitional in nature. Attorney Stutts discussed the field

located in his estimate not more than one quarter mile that contained numerous truck bodies, also located in other areas along this road are persons that have grading equipment and dump trucks located on their property. It was his feeling that this request was not outside of the characteristic of this property when you see the type of transition on both ends of this road where changes are being made from more rural and agricultural residential to industrial uses. People are operating businesses from their property in this area.

When we crafted this Home Occupation Permit Text Amendment, we did so keeping the same number of vehicles (5), but we are saying that vehicles with 3 axles are permitted unless the parcel is less than 15 acres.

We've taken your minimum acreage for a Home Occupation Permit and increased it three fold. Under the current Home Occupation standards, no 3 axle vehicles are permitted. This also would include a 3 axle dump truck that may be used by the grading contractor. This amendment stipulates in order to qualify for the 3 axle vehicle you must have a minimum of 15 acres. At this point you would be allowed 3 vehicles with 3 or more axles. It increases at 20 acres, and then once more when you move to 25 acres. This means the maximum amount of vehicles allowed for 25 acres would be 5 vehicles with 3 or more axles. Even if you had 100 acres no more than 5 vehicles would be allowed. What we have tried to do with this amendment is increase the amount of property from 5 acres to 15 acres but keep the same number of vehicles (5) the same as is currently allowed.

Attorney Stutts did not think that when this was enacted in 2010 it was Council's intent to try to limit this type of business. If Mr. Adcock had 5 pickup trucks or 5 heating and cooling vans at this location there would not be a problem with the type of language currently used for this use, but because of the language concerning the number of axles allowed is why we are here. Mr. Adcock wants to come into compliance with the City and is willing to do other things to make the City Council and his neighbors happy. We have talked about screening and items of this nature to minimize any impact this may.

Attorney Stutts called for questions.

Council member Lohr discussed his conversations with the previous Planning Director, Julie Maybee concerning a landscaping permit that she had advised him he should get. She was in the process of giving me a Landscaping Permit prior to leaving the City of Trinity. Council member Lohr questioned why Mr. Adcock could not apply for a Landscape Permit since he had 22 acres.

Council member Ayers discussed Attorney Stutts conversation regarding this request and his confusion concerning this request. He asked if Mr. Adcock was in the truck parking business and what type of business Mr. Adcock had.

Attorney Stutts replied that Mr. Adcock uses trucks for his business which is a contracting and grading business.

Council member Ayers asked Planning Director Allred if this type of business was allowed in this area.

Mr. Allred replied, "No" that is why we are here today. If Mr. Adcock had a Home Occupation Permit to begin with I would have never questioned this use but I have been unable to find where a permit was issued.

There was discussion between Attorney Stutts and Council members whether this type of business was allowed with a permit and if a permit was ever issued to Mr. Adcock for this use. Council member Ayers commented that it was his understanding that Mr. Adcock had been operating but was not in compliance with the City Ordinance. Now Council is being asked to consider allowing him to park the trucks. He expressed his confusion concerning this request.

Attorney Stutts advised members that Mr. Adcock had trucks at this location since 2008. This predated the Ordinance and there is no confusion about that. There was no limitation on what he was doing. Attorney Stutts reiterated earlier comments concerning his feelings why the Ordinance regarding truck parking was created in 2010. Mr. Adcock is trying to come into compliance and that is what we are trying to do.

Council member Gantt discussed an earlier request sometime in 2010 to have this property rezoned to Industrial Use that was denied. She confirmed at the time this rezoning was done and Mr. Adcock was leaving we had a couple of Council members to speak out and tell him to just get a Home Occupation Permit. Whether he got the permit or not, Ms. Gantt does not know but it was never approved by City Council. That is exactly what happened.

Attorney Stutts replied to Ms. Gantt that he can only go on the conversations he has had with the other folks that were on Council at that time. The request at this time is not to be rezoned, we are asking for Mr. Adcock to be allowed to have vehicles with three axels instead of two axels. We are not asking to be able to allow more vehicles to be parked there even with 22 acres. The fact is Mr. Adcock has 4 times more property than is required for a Home Occupation Permit. We are more than willing to work within the city guidelines to do whatever we can to satisfy the city's requirements. He wants to be able to operate his business and come into compliance with the City's Ordinances.

Council member Lohr asked how many complaints had been received in the last 4 years concerning this business and how many different people have complained.

Council member Lohr stated for the record: "I have been here and heard Council members when I first came on and was one of the latest members to come on, they agreed if somebody come to town and they didn't like them they would make them wish they would not have come to town. I can name the time and the place."

There was discussion between Council member Payne and Attorney Stutts concerning the need for a Home Occupation Permit after the text amendments if approved. Attorney Stutts commented that Mr. Adcock would be required to apply for the permit and meet the requirements for a Home Occupation to come into compliance.

Council member Payne commented that he had visited the site and understood that it would be hard to place a lot of trucks at this location and grading would need to be done. He asked if a driveway permit for this location was issued by the NC Department of Transportation.

Mr. Adcock confirmed that the driveway existed when he purchased the property and was permitted.

Council member Payne agreed that there were a lot of different uses on this road such as manufacturing. Mickey Body is located in this area but these areas are zoned differently.

Council member Gantt was concerned with the large amount of open space located in this area and the affect this might have not only on this area but other areas as well. It was her opinion that the citizens did not want trucks located over the entire city.

Council member Frazier commented on Attorney Stutts' perception of Mendenhall Road being an area of transition. The end of Prospect Street is identified as an Employment Center in our Land Use Plan. The remainder of Mendenhall in its entirety is residential.

Council member Payne asked Mr. Allred if he created this text amendment.

Mr. Allred confirmed this proposed text amendment was created by Attorney Stutts who met with us previously on methods that could be used to bring his client into compliance concerning the 3 axle vehicles. Mr. Allred continued by advising Council that Mr. Adcock would be able to meet all the criteria for a Home Occupation Permit if he did not have 3 axle vehicles. That is why this text amendment is proposed. As I told Attorney Stutts in conversation, the issue was never whether he was issued a permit. The issue was that when I went to check his property even if Mr. Adcock had been issued the permit, I would have revoked it at that point. Even with this text amendment Mr. Adcock would still have to come and get another permit.

Attorney Stutts commented that this was directly in line with Council member Ayers earlier comments. If we can't get past step one (1) then my client is going to have to make some decisions what he will do with his property. He wants to come into compliance and continue to live at this location. We have tried to narrowly draft this so that it would not be over reaching or create more problems for City Council.

Council member Payne commented on his experiences as a business owner and working with state and federal guidelines and understood what Mr. Adcock was facing. It was not his desire to put anyone out of business and hoped that the City would be able to work with him to resolve this issue.

The last comments and questions to Attorney Stutts that were discussed concerned the current zoning of the property, the effect this proposed change would have on the Ordinance, as well as the limits on Home Occupation permits.

At the conclusion of the applicant presentation, Mayor Hill called on Mr. Allred for comments.

Planning Director Allred asked Council to keep in mind when doing a text amendment to the Ordinance; you are giving staff guidance to make a decision. In Section 13-11 in the Zoning Ordinance in the Tractor Parking section I highlighted the words "**terminate through attrition.**" This signals to me in the future there will be no more tractors on residential property in the City of Trinity. "Terminate through attrition" allows persons who have their permits to keep their tractors but when they move to another location outside the city or pass away those tractors will no longer be allowed. This is how I read the intent of the Ordinance.

**The Planning/Zoning Board recommended and agreed with the staff recommendation to not recommend this change based on the intent of the Ordinance and for public safety.**

**I do not recommend this based on the intent of the Ordinance that was not to allow tractors on residential property and for public safety.**

After further discussion, Council member Frazier asked Mr. Allred to restate staff and Planning/Zoning recommendation.

**Mr. Allred stated it was his recommendation and the Planning/Zoning Board recommendation not to recommend based on the intent of the Ordinance and the public safety. Mr. Allred read excerpts from the Planning Meeting as follows regarding public safety: If this is allowed that may affect surrounding property owners should they ever want to subdivide their property.**

There was further discussion concerning whether the truck parking at this location could be grandfathered since Mr. Adcock owned the property prior to 2010 when the Ordinance was enacted. After discussion, it was determined that a business could be grandfathered but parking could not.

With no other discussion, Mayor Hill reviewed the options for motions with Council and called for a motion.

*Council member Gantt made a motion to deny the request.*

*Mayor Hill stated this motion to deny is as stated in Item 3 number 3: To vote against the text amendment to keep with the intent of the Zoning Ordinance to eventually eliminate tractors and trailers from residential communities through attrition.*

*The motion as read by Mayor Hill was seconded by Council member Ayers. The motion to deny was approved by a vote of 5 ayes and 3 nays, with Council members Lohr, Payne, and Carico voting against the motion. There were no members absent.*

#### **4. Rezoning of PIN #708303794, with an Address of 5268 Surrett Dr. From RA (Residential Agriculture) to M-2 (Light Industrial).**

Mayor Hill opened this item for discussion and called on Mr. Allred for briefing concerning this item.

Mr. Allred reviewed the rezoning application for these properties as included in the packet **(See Attachment A).**

After the review of the information included in Attachment A, Mr. Allred presented Staff and Planning/Zoning Recommendation for this item: **Recommendation for approval by staff due to compatibility with the Land Use Plan, surrounding properties, and it would improve the property value.**

With no questions, *Council member Frazier made a motion to approve the rezoning request address being 5628 Surrett Drive from Residential Agriculture to M-2 Light Industrial. The motion was seconded by Council member Payne and approved unanimously by a vote of 8 ayes and 0 nays.*

## **VI. Code Enforcement Report and Permits Report.**

Mr. Allred gave the Code Enforcement Report advising Council that 11 new cases were open and 6 cases have been closed.

Council member Lohr questioned the number of persons that had complained concerning the truck parking.

Mr. Lohr and Mr. Allred discussed trucks located on his property. Mr. Allred confirmed that all he has asked Mr. Lohr to do is to move his trucks back 150' from road.

Council member Gantt shared that the swimming pool located on Highway 62 has not been picked up.

Staff advised Council member Gantt that it would be disposed of during City Haul.

## **VII. Business from City Manager and Staff**

- Manager Hinson reminded those present of the upcoming City Haul dates. This event will be held October 22, 23 and 24.
- Jacob Carroll pick up scheduled for November 20, 2015.
- A Shred It event has been scheduled for November 7, 2015 from 10am until 1 pm.

## **VIII. Business from Mayor and Council**

Mayor Hill and Council member Frazier gave an update on the Plant Sale held at the Dollar General for Saint Jude's Fund Raiser. They felt it was a great success and thanked staff for their work on this project.

## **VIII. Adjournment**

*Motion to adjourn the October 19, 2015 meeting by Council member Payne seconded by Council member Frazier and approved unanimously with a vote of 8 ayes 0 nays at 7:37pm.*